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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,938	10/17/2005	Jerzy W. Chojnacki	02635/0202519-US0	1881

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EXAMINER	
FLORES SANCHEZ, OMAR	
ART UNIT	PAPER NUMBER
3724	
MAIL DATE	DELIVERY MODE
08/06/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/524,938	CHOJNACKI ET AL.	
	Examiner	Art Unit	
	Omar Flores-Sánchez	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *09 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment received on 04/09/08.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 2, 4, 5, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824).

Regarding to claim 1, Ray discloses the invention substantially as claimed including a transporting device 10, a main conveyor 13 having a belt (see col. 1, line 67) which is situated at an angle beta (see Fig. 1), guides 23 coupled to the cutting machine, a cutterhead 22 and an access space (see Fig. 2, col. 1, lines 20-23). Ray doesn't show the guides coupled to the transporting device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Ray's device by providing the guides coupled to the transporting device for the purpose reducing the complexity of the device, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Ray discloses the claimed invention except for an angle beta from –10 to +10 degrees or 0 to 5 degrees. However, Ray teaches the conveyor 13 at an angle for the purpose of transporting the tobacco leaf. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Ray's device by providing the angle beta from –10 to +10 degrees or 0 to 5 degrees for the purpose of better transporting the tobacco leaf, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 f.2d 272, 205 USPQ 215 (CCPA 1980). Regarding claim 2, Ray teaches an upper conveyor 12. Regarding claims 4 and 5, endless conveyors (see col. 1, line 67) which are modular structure. Regarding claim 8, Ray teaches an angle alpha (see Fig. 1). Regarding claim 11, Ray teaches the inclination of the angle beta is along a direction of transportation towards the outlet (see Fig. 1).

4. Claims 3, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824) in view of Ray (5,040,549).

Ray'824 discloses the invention substantially as claimed except for a vibrating plate/portion. However, Ray'549 teaches the use of a vibrating plate 21 for the purpose of avoiding clog the conveyor mechanism. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray'824 by providing the vibrating plate as taught by Ray'549 in order to obtain a device that avoiding clog the conveyor mechanism. Also, Ray's conveyors are capable of moving independently or together.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824) in view of Muraoka et al. (5,316,132).

Ray discloses the invention substantially as claimed except for a material other than an alloy of non-ferrous metal. However, Muraoka et al. teaches the use of a support fabric 2 (see col. 3, lines 47-50) and thermoplastic material 3 for the purpose of ensuring an adequate longitudinal and transverse stability (col. 3, lines 58-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the support fabric and thermoplastic material as taught by Muraoka et al. in order to obtain a device that ensures an adequate longitudinal and transverse stability.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824) in view of Sherrill et al. (3,511,122).

Ray discloses the invention substantially as claimed except for front and rear rolls of the upper conveyor are independently adjusted. However, Sherrill et al. teaches the use of front and rear rolls (10 and 13) of the upper conveyor 5 are independently adjusted (see elements 11 and 15) for the purpose of adjusting the conveyor depending of the size of the product to be cut. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the front and rear rolls of the upper conveyor are independently adjusted as taught by Sherrill et al. in order to obtain a device that adjusts the conveyor depending of the size of the product to be cut.

7. Claims 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824).

Ray discloses the claimed invention except for the guides placed at a height equal at least to the height of the upper conveyor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the guides placed at a height equal at least to the height of the upper conveyor for the purpose of having better access to the conveyor area, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse,* 86 USPQ 70.

8. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824).

Ray discloses the claimed invention including a drive mechanism (see col. 1, lines 1-3). Ray doesn't show the drive placed on the front or rear rolls of the upper or main conveyors. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the drive placed on the front or rear rolls of the upper or main conveyors, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse,* 86 USPQ 70.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824) in view of Korber (foreign pat. no. 694,375).

Ray discloses the invention substantially as claimed except for the transporting device joined to the lower knife and the edge of which is positioned in a working position at a near to zero distance from a surface of a cylinder defined by edges of the knives of the cutterhead. However, Korber teaches the use of a transporting device (see Fig. 1) joined to the lower knife 3b and the edge of which is positioned in a working position at a near to zero distance from a surface of a cylinder defined by edges of the knives 2 of the cutterhead 1 for the purpose of providing a better cut of the product. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the limitation mentioned above as taught by Korber in order to obtain a device that provides a better cut of the product.

Response to Arguments

10. Applicant's arguments have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the transporting device is arranged on guides that are attached to the main body that contain the cutterhead) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar Flores-Sánchez whose telephone number is 571-272-4507. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/O. F./
Examiner, Art Unit 3724
7/29/2008
/Boyer D. Ashley/
Supervisory Patent Examiner, Art Unit 3724